APPENDIX A

AMENDMENT 4

[Unreasonable searches and seizures.]—The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT 5

[Criminal actions—Provisions concerning—Due process of law and just compensation clauses.]—No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

APPENDIX B

No. 75-1034

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA and
CHARLES T. REHLING, Special Agent
of the Internal Revenue Service,

Plaintiffs-Appellees,

v.

JAMES L. COBB, JR.,

Defendant-Appellant.

ORDER

(Filed May 16, 1975)

Before: MILLER and ENGEL, Circuit Judges, and O'SULLIVAN, Senior Circuit Judge

This is an appeal from an order of the United States District Court for the Southern District of Ohio enforcing an Internal Revenue summons in proceedings brought under §§ 7402 (b) and 7604 (a) of the Internal Revenue Code of 1954.

Respondent is a practicing attorney in Covington, Kentucky, and the summons was directed toward production of certain records of a law partnership used in the preparation of a 1971 partnership return for the law firm of Peter F. Beasley and James L. Cobb, Jr., and like records

relating to the 1972 partnership return of the law partnership of Cobb, Beasley and Oldfield. Refusal to obey the summons and objection thereto both before the District Court and here is based upon the respondent's claim that disclosure is barred upon the respondent's assertion of his Fifth Amendment privilege against self-incrimination, that the use of the summons to obtain such information in the face of the exercise of the privilege amounts to an unwarranted intrusion upon the respondent under the Fourth Amendment, and finally that the lower court erred in finding that a partnership existed so as to bring the case within the holding of *Bellis* v. *United States,* 417 U.S. 85 (1974).

In a carefully worded opinion, District Judge Timothy Hogan granted enforcement, finding that the records sought pertain to a partnership within the meaning of applicable Kentucky law, but carefully limited the scope to exclude client files as distinguished from financial records and to limit any testimony of respondent to the identification of the records produced.

Upon the disputed facts before him, the trial judge found that the records sought were those of the law partnerships for the years in question and not of the respondent personally, and that therefore, this case was controlled by *Bellis* v. *United States,* supra. While it is true that *Bellis* dealt with the productions by summons of records for purposes of a grand jury investigation, we see no difference between that use and the use here, even though the special agent acknowledges that the investigation involved is both criminal and civil.

Accordingly, it appearing that the factual finding of the trial judge that the petitioners had "carried the burden of establishing the existence of the two partnerships" is

not clearly erroneous and that the district judge properly applied the law in issuing the order of enforcement,

IT IS ORDERED that the judgment of the District Court be and it is hereby affirmed.

ENTERED BY ORDER OF THE COURT

/s/ JOHN P. HEHMAN,
Clerk

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

CIVIL ACTION NO. C 1 74-323

UNITED STATES OF AMERICA and CHARLES T. REHLING, Special Agent of the Internal Revenue Service,
Petitioners,

v.

JAMES L. COBB, JR.,
Respondent.

FINAL ORDER

(Filed October 9, 1974)

In accordance with the findings and conclusions contained in the Court's memorandum herein filed on September 26, 1974, it is

ORDERED that James L. Cobb, Jr. appear before Special Agent Charles T. Rehling at a mutually agreeable time and place within twenty (20) days of the date of this order to testify and produce for examination and copying, the following documents:

> All of the records used in the preparation of the 1971 partnership return (Treasury Form 1065) of the law partnership of Peter F. Beasley and James L. Cobb, Jr. and the 1972 partnership return (Treasury Form 1065) filed under the name of the law

partnership of COBB, BEASLEY, & OLDFIELD, and including specifically the following records of the said partnerships:

the general ledger, the cash receipts journal, the cash disbursement journal, the expense journal, all bank statements, all work papers, summaries and working trial balances.

Provided however, that client files, as distinguished from financial records, are expressly excluded from the scope of this order and that the testimony required of James L. Cobb, Jr. is limited to the identification of the records produced. It is further

ORDERED that if the parties cannot agree on the time and place for compliance with the summons, the petitioner, Special Agent Rehling, shall designate such time and place and shall give the respondent written notice thereof at least five (5) days prior to said date.

Dated: October 8, 1974.

/s/ TIMOTHY S. HOGAN
United States District Judge

/s/ BYRON E. TRAPP
Assistant U. S. Attorney

/s/ RALPH WINKLER
First Assistant U. S. Attorney

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

NO. C 1 74-323

UNITED STATES OF AMERICA, et al.,
Petitioners,

v.

JAMES L. COBB, JR.,
Respondent.

MEMO

(Filed September 26, 1974)

This case is before the Court on the petition of the United States seeking enforcement of an Internal Revenue summons. An order to show cause was issued, an evidentiary hearing has been held, an answer has been filed, and the matter argued and briefed by counsel.

For the tax year 1971, the respondent was party to the filing of a Partnership Income Tax Return (Federal — Informational). The partnership return indicated the existence of a Kentucky partnership during 1971, known as Cobb and Beasley, for the practice of law, and that the respondent was a member.

For the tax year 1972, the respondent was party to the filing of a Partnership Income Tax Return (Federal — Informational). The return indicated the existence of a Kentucky partnership during 1972, known as Cobb,

Beasley and Oldfield, for the practice of law, and that the respondent was a member thereof.

The I.R.S. initiated an investigation into the individual tax liability of the respondent which included the years 1971 and 1972. The matter received the attention of an agent of the I.R.S. and, subsequently, both of the agent and a Special Agent. The investigation in which the Special Agent is involved is both criminal and civil, and it is conceded that the information sought by the I.R.S. summons would be used as evidence against respondent if it disclosed or became relevant to any criminal violation of the Income Tax Laws.

The summons which is the subject of this proceeding was issued to "Messrs. P. F. Beasley, James L. Cobb, Jr., and W. C. Oldfield, operating under the firm name of Cobb, Beasley and Oldfield." It was served on the respondent Cobb. It required appearance before the Special Agent, the giving of testimony relative to the tax liability of the person named, and required the production of "all of the records used in the preparation of the 1971 partnership return (Treasury Form No. 1065) of the law partnership of Peter F. Beasley and James L. Cobb, Jr., and the 1972 partnership return (Treasury Form No. 1065) filed under the name of the law partnership of Cobb, Beasley and Oldfield and including specifically the following records of said partnerships — the general ledger, the cash receipts journal, the cash disbursements journal, the expense journal, all cancelled checks, all bank statements, all work papers, summaries and working trial balances."

The respondent declined to appear at the designated time and place on the ground that "the subpoena violates the constitutional privilege of the respondent" (self-incrimination) and, on the same ground, has filed a motion in this proceeding to quash the subpoena.

The respondent does not question his possession and control of whatever records, if any, were the basis for the partnership returns.

It is not claimed that either Oldfield or Beasley is in any family relationship with respondent. The relationship is at least purely professional and business.

It is not questioned that

a) during 1971 and 1972 the individuals held themselves out as partners;

b) a common bank account was maintained and each individual involved, at the respective time, had a right of withdrawal; and

c) the individuals concerned were willing parties to the filing of a Federal Partnership Return;

d) under Kentucky law partnerships bear the indicia of legal entities, at least sufficient to be treated as distinct entities for purposes of Federal Tax laws.

The United States relies heavily on *Bellis* v. *United States,* — U.S. — No. 73-190. The respondent seeks to distinguish that case mainly on the ground that a partnership is contractual, neither of these claimed partnerships involved any formal written partnership agreement, and that no tax advantage was obtained from adopting or representing the adoption of the partnership form.

A partnership is, of course, contractual but, as a matter of general and well settled law, no formal written agreement is necessary and the arrangement may be otherwise shown. This record is sketchy with respect to the actual arrangements involved but, based on the record, the petitioners have carried the burden of establishing the ex-

istence of the two partnerships. There really is no evidence contra.

It is therefore the conclusion of this Court that *Bellis* is controlling for the reasons stated in that case, which do not require repetition here. The question therein, determined in the negative, was and is "whether a partner in a small law firm may invoke his personal privilege against self-incrimination to justify his refusal to comply with a subpoena requiring production of the partnership financial records." The reason is that the partnership is recognized as an independent entity, apart from its individual members, and that an individual may not rely on the privilege to avoid producing the records of a collective entity which are in his possession in a representative capacity.

The petition is granted and an appropriate order directing the production of the records may be prepared and presented.

Two things — (1) client files, as distinguished from financial records, should be expressly excluded from the scope of the order, and (2) it should be clear that the "testimony" required is limited to the identification of the records produced.

/s/ TIMOTHY S. HOGAN
United States District Judge

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

CIVIL ACION NO. C 1 74-323

UNITED STATES OF AMERICA and CHARLES T. REHLING, Special Agent of the Internal Revenue Service,

Petitioners,

v.

JAMES L. COBB, JR.,

Respondent.

PETITION TO ENFORCE INTERNAL REVENUE SERVICE SUMMONS

(Filed ————)

The United States of America and Charles T. Rehling, Special Agent of the Internal Revenue Service, by their attorney, William W. Milligan, United States Attorney for the Southern District of Ohio, show unto this Court as follows:

I

This is a proceeding brought under the authority of Sections 7402 (b) and 7604 (a) of the Internal Revenue Code of 1954 to judicially enforce an Internal Revenue Service summons.

II

The petitioner, Charles T. Rehling is a Special Agent of the Internal Revenue Service, employed in the Intelligence Division of the Office of the District Director of Internal Revenue in Cincinnati, Ohio.

III

The respondent, James L. Cobb, Jr., resides at 969 Sutton Road, Cincinnati, Ohio 45230.

Special Agent, Charles T. Rehling is conducting an investigation for the purpose of ascertaining the correctness of income tax returns filed by James L. Cobb, Jr., for the years 1971 and 1972, as is set forth in the affidavit of Special Agent Rehling, attached hereto as Exhibit A.

V

The respondent, James L. Cobb, Jr. is in possession and control of testimony and documents concerning the above-described investigation.

VI

On June 6, 1974, an Internal Revenue Service summons, a copy of which is attached hereto as Exhibit B, was issued by the petitioner, Charles T. Rehling directing the respondent, James L. Cobb, Jr., to appear before the said Special Agent, on June 21, 1974, at 10:00 A.M., at Room 308 7th and Scott Streets, Covington, Kentucky, to testify and to produce for examination books, records and other papers, all of which are fully described in the summons attached hereto as Exhibit B. A copy of this summons was personally served on James L. Cobb, Jr.,

on June 6, 1974, as is set out in the affidavit of the petitioner, Charles T. Rehling, attached hereto as Exhibit A.

VII

On June 21, 1974, the respondent, James L. Cobb, Jr., did not appear in response to the summons. The respondent's refusal to comply with the summons continues to date as is set forth in the affidavit of Charles T. Rehling, attached hereto as Exhibit A.

VIII

It was and is now essential to the determination of the correct tax liability of James L. Cobb, Jr., for the years 1971 and 1972, that the respondent be required to appear and produce the documents, records and other information sought in the summons and to give testimony regarding those documents and records as is evidenced by the affidavit of Charles T. Rehling which is attached hereto as Exhibit A.

WHEREFORE, the petitioners, the United States of America and Charles T. Rehling respectfully pray:

1. That this Court enter an order directing the respondent James L. Cobb, Jr. to show cause, if any he has, why he should not comply with and obey the summons attached hereto as Exhibit B in each and every requirement thereof;

2. That this Court enter an order directing the respondent, James L. Cobb, Jr., to obey the summons attached hereto as Exhibit B in each and every requirement thereof by ordering the attendance and production of the records as is required and called for by the terms of

the summons before the petitioner, Charles T. Rehling, or any other proper officer of the Internal Revenue Service, at such time and place as hereafter may be fixed by the petitioners, or any other proper officer of the Internal Revenue Service, and by ordering the respondent to appear for the purpose of giving testimony concerning the tax liability of James L. Cobb, Jr., as to each or any of the years 1971 and 1972; and

3. That this Court grant such other and further relief as it deems just and proper.

WILLIAM W. MILLIGAN
United States Attorney

By: .....
Assistant United States Attorney